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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11  
12 NEXTDOOR.COM, INC., a Delaware  
corporation,

13 Plaintiff,

14 v.

15 RAJ ABHYANKER, an individual,

16 Defendant.  
17

Case No. 3:12-cv-05667-EMC-NMC

**DEFENDANT RAJ ABHYANKER'S MOTION  
IN LIMINE No. 5 TO EXCLUDE THE  
TESTIMONY OF EXPERT WITNESS  
DEBORAH JAY**

18  
19 Defendant Raj Abhyanker ("Abhyanker") hereby moves to exclude the testimony of  
20 expert witness Deborah Jay, due to the irrelevance of her opinions to the remaining claim and  
21 defenses at issue.

22 **Pertinent Procedural Posture**

23 Nextdoor.com presented Ms. Deborah Jay as an expert in public opinion surveys. Her  
24 testimony was limited to establishing support for one or more elements of the second cause of  
25 action, which sought declaratory relief regarding the enforceability of the FATDOOR trademarks  
26 as against Nextdoor.com. Ms. Jay's expert report was provided by Nextdoor.com on August 8,  
27 2014. The deposition of Ms. Jay, originally scheduled for August 28, 2014, was postponed

1 pending the outcome of Nextdoor.com's late-breaking motion to voluntarily dismiss the second  
2 cause of action. Since the dismissal of Count II was granted, Nextdoor.com has refused to  
3 withdraw Ms. Jay as an expert, even though it has acknowledged that her testimony is irrelevant  
4 to the issues remaining in the case. Dkt. 351 at p.2. Nextdoor.com has objected to producing Ms.  
5 Jay for deposition. Dkt. No. 351 at p.2. For these reasons, the Court should exclude Ms. Jay  
6 from serving as a testifying expert.

7 **Argument**

8 To be admissible, expert testimony must, *inter alia*, "help the trier of fact to understand  
9 the evidence or to determine *a fact in issue*." See Fed. R. Evid. 702(a) (italics added); *see also*  
10 *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 597 (1993) ("...the Rules of Evidence --  
11 especially Rule 702 -- do assign to the trial judge the task of ensuring that an expert's testimony  
12 both rests on a reliable foundation and is relevant to the task at hand").

13 The scope of Ms. Jay's engagement was limited to supply factual support for elements of a  
14 cause of action which has been dismissed. Nextdoor.com itself conceded that Ms. Jay's report  
15 "was limited to issues that are no longer in the case" and that any deposition of Ms. Jay would be  
16 "unrelated and irrelevant to any issues remaining in the case." Dkt. 351 at p.2. Nevertheless,  
17 Nextdoor.com refused to withdraw Ms. Jay in an attempt to leverage reimbursement for Ms. Jay's  
18 costs from Mr. Abhyanker, a matter which was decided by Magistrate Judge Cousins against  
19 Nextdoor.com and Ms. Jay. Dkt. 352. As Ms. Jay has nothing relevant to add to the narrowed  
20 case at hand, the court should preclude her from testifying.

21 Moreover, Rule 26 of the Federal Rules of Civil Procedure provides that a party has the  
22 right to depose any person who has been identified as an expert whose opinions may be presented  
23 at trial. Fed. R. Civ. P. 26(b)(4)(A). The opportunity to review the opposing party's expert  
24 witness's report does not satisfy a party's right to depose that expert. *Harris v. United States*, 132  
25 Fed. Appx. 183, 185 (9th Cir. 2005).

26 Nextdoor.com has refused to permit the deposition of Ms. Jay. Having been denied the  
27 opportunity guaranteed by Rule 26 to examine the opinions of Ms. Jay and her support for them,

1 it would be patently unfair to Mr. Abhyanker to allow Ms. Jay to be a testifying expert regarding  
2 the remaining issues in the case.

3 In short, Nextdoor.com has held Ms. Jay out as an expert whose opinion is limited to  
4 issues irrelevant to the narrowed case at hand. Inexplicably, Nextdoor.com has refused to  
5 withdraw Ms. Jay as a testifying expert, yet it has also refused to allow Mr. Abhyanker to depose  
6 her as a testifying expert. For the foregoing reasons, Mr. Abhyanker respectfully requests that the  
7 Court grant his Motion and bar the testimony of expert Deborah Jay.

8  
9 Respectfully submitted,

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11 Dated: October 24, 2014

LEGALFORCE RAJ ABHYANKER, P.C.

12 /s/ David Lavine

13 DAVID LAVINE

14 Attorney for Defendant RAJ ABHYANKER  
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